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March 11, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 22, 2004

Case Number: TSO-0150

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the individual") to hold an access authorization.¹ The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual is eligible for access authorization. As discussed below, I find that access authorization should not be granted in this case.

I. BACKGROUND

This administrative review proceeding began with the issuance of a Notification Letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization in connection with his work. In accordance with 10 C.F.R. § 710.21, the Notification Letter included a statement of the derogatory information causing the security concern.

The security concern cited in the Letter involves the individual's excessive use of alcohol. The Notification Letter stated that the individual is a user of alcohol habitually to excess, and has been diagnosed by a DOE consultant psychologist (hereinafter consultant

1/ An access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

psychologist) as suffering from "alcohol-related disorder not otherwise specified." The Notification Letter also indicated that the individual has not shown adequate evidence of rehabilitation or reformation. The letter states that the individual continues to drink alcohol habitually at a greater than moderate level, becoming intoxicated one to two times per week by consuming seven to twelve beers. According to the Notification Letter, this constitutes derogatory information under 10 C.F.R. § 710.8(j)(hereinafter Criterion J).²

The Letter also indicates that the individual has engaged in unusual conduct or is subject to circumstances that tend to show he is not honest, reliable or trustworthy, or that furnish reason to believe he may be subject to pressure coercion, exploitation or duress, and this may cause him to act contrary to the best interests of the national security. 10 C.F.R. § 710.8(l)(Criterion L). In this regard, the Letter notes that the individual was arrested for public drunkenness in 1986, after consuming 8 to 12 beers at a party in a two hour time period. According to the Letter, in 1988, the individual was arrested for driving under the influence of alcohol (DUI), after consuming eight 10-ounce beers. He pled guilty to the charge and was ordered to pay a fine. His license was suspended and he was directed to attend an alcohol awareness course. In 1989, he was arrested for public intoxication after consuming 8 to 12 beers, and in 2000 was cited for reckless driving after consuming two beers.

The DOE consultant psychologist evaluated the individual on December 12, 2003. In his report based on the evaluation, the DOE consultant psychologist diagnosed the individual as suffering from alcohol-related disorder not otherwise specified, and as a user of alcohol habitually to excess. The consultant psychologist noted that the individual formerly met the criteria for alcohol abuse but, at the time of the evaluation, did not demonstrate sufficient symptoms for this diagnosis. The consultant psychologist further indicated that the individual had not shown adequate evidence of rehabilitation or reformation, that he continues to drink alcohol habitually at a greater than moderate level, and has not had a "full or complete alcohol treatment intervention."

2/ Criterion J security concerns relate to an individual's use of alcohol habitually to excess, or to an individual's having been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

In the report, the DOE consultant psychologist recommended that this individual abstain from alcohol use. The consultant psychologist indicated that in order to demonstrate reformation from the excessive alcohol use, the individual should abstain from alcohol for a minimum of 12 months, and that a 24-month period would be a more reliable gauge. The consultant psychologist further indicated that the individual could establish rehabilitation by abstention from alcohol for 12 to 24 months accompanied by "consistent involvement in AA [Alcoholics' Anonymous] and participation in alcohol counseling for the period of time recommended by the substance abuse professional." He further stated that "AA participation should include the use of a sponsor, involve at least weekly meetings and be documented."

The Notification Letter informed the individual that he was entitled to a hearing before a Hearing Officer, in order to respond to the information contained in that letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual was represented by an attorney. The individual testified on his own behalf, and presented the testimony of his alcohol therapist (therapist), the site psychologist at the installation where the individual is employed (site psychologist), his wife, his father-in-law, a social friend, a colleague, and his two AA sponsors. The DOE Counsel presented the testimony of the DOE consultant psychologist.

II. Hearing Testimony

At the outset, the individual's attorney stipulated to the diagnosis of the DOE consultant psychologist that the individual used alcohol habitually to excess and suffered from alcohol-related disorder not otherwise specified. See Transcript (hereinafter Tr.) at 7. Accordingly, the focus of the hearing was on the steps that the individual has taken towards reformation and rehabilitation. The witnesses' testimony was directed towards those matters.³

3/ Prior to the hearing the individual submitted several letters from friends and colleagues, all confirming that he is a man of high moral character.

A. The DOE Consultant Psychologist

The consultant psychologist reiterated the findings set forth in the evaluation letter. He believed that the individual suffered from alcohol abuse in the past and at the time of the evaluation was suffering from an "alcohol-related disorder not otherwise specified." He maintained that in order to demonstrate reformation/rehabilitation, the individual should establish that he has abstained from alcohol for at least one year and participate in a program such as AA, as well as receive some alcohol counseling and therapy for a period of time recommended by a substance abuse professional. He testified that at the time of the evaluation, the individual had not demonstrated that he had taken those steps. Tr. at 14-19.

B. The Site Psychologist

The site psychologist is the staff psychologist at the installation where the individual is employed. His responsibilities include fitness for duty assessments. He spent several sessions with the individual after the individual had received the consultant psychologist's evaluation. He diagnosed the individual with alcohol abuse, and concurred with the recommendations of the consultant psychologist as to the steps that the individual should take to establish reformation/rehabilitation. This witness testified that at the time the individual first met with him, the individual had just begun his abstinence period. He found the individual at that time to be open and honest about his alcohol problems, and was impressed with his truthfulness. At the outset, the site psychologist recommended that the individual seek one-on-one counseling with an alcohol abuse specialist, and attend AA meetings. The site psychologist indicated that individual promptly did so. Based on his several sessions with the individual, the site psychologist believes the prognosis for the individual is excellent. Tr. at 23-48.

C. The Therapist

This witness is a licensed clinical social worker with a specialty in alcohol and drug counseling. She has been treating the individual for several months and has had 13 weekly sessions with the individual. She testified that she has seen a major change in the individual's attitude, that he has become committed to the rehabilitation process and that he is healthier in general. She believes that his prognosis is good, and that he is serious about continuing his program. She testified that the individual is now

able to address his problems directly, instead of coping with stress through alcohol consumption. Tr. at 72-77. With respect to the individual's recovery status, she stated that he is in early recovery, and that "he is in a really good place for six months [of abstinence] right now." Tr. at 85. She further indicated that she would trust him with "confidential information" at this point, but stated that "a year is also a good time frame." Tr. at 88.

D. The Individual

The individual agreed with the diagnosis of the DOE consultant psychologist and the site psychologist. Tr. at 119. He stated that his last alcohol use was on July 7, 2004. Tr. at 138. He confirmed that it is his intention never to use alcohol again. Tr. at 123. He stated that in the past he tried to cure fears, stress, and anxiety by turning to alcohol. Tr. at 123. He indicated that he has now learned other means to cope with stress. He has people to talk to, including his AA sponsors and a supportive family. Tr. at 124, 126. He gave as an example, that when he was feeling stressed about the instant hearing, he called up one of his AA sponsors to discuss it. Tr. at 128. He testified that he is happier with his life since he has stopped using alcohol. Tr. at 137, 143.

E. The Wife

The wife testified that the individual has not used alcohol since early July of 2004. Tr. at 98, 102. She believes that she would be able to discern if the individual had resumed alcohol use: "One, I would be able to smell it. Two, I could tell the look in his eyes, in his face." Tr. at 102-03. She stated that the individual has been transformed since his abstinence: he is now happier, has less stress and better relations with his family. Tr. at 97-98. She further stated that the individual no longer uses alcohol to deal with stress, but rather takes walks, meditates and "think[s] things through." Tr. at 101. She is confident that he now has mechanisms in place to deal with stress in his life. Tr. at 105. She does not believe that he will use alcohol again. Tr. at 98.

F. Father-in-Law

The individual's father-in-law testified that he has known the individual approximately 10 years and he sees the individual about three times a week. Tr. at 107, 108. He indicated that the individual has not used alcohol since the summer of 2004. Tr. at 114. He referred to recent family gatherings at which other family

members consumed alcohol, and confirmed that the individual refrained from alcohol on those occasions. Tr. at 110. He testified that he has noticed a change in the individual since he has stopped alcohol use. He stated that the individual is now more open about his feelings and about how alcohol affected his life. Tr. at 112-113. This witness further stated that the individual now comes to him if there is stress in his life, and the individual feels free to discuss that stress with him. Tr. at 114.

G. Friend and Co-worker

The individual's friend and co-worker both testified that they have known the individual for several years. They visit with the individual frequently, on almost a daily basis, and have not seen the individual use alcohol for at least six months. Tr. at 39, 41, 90, 92, 93. They believed him to be a trustworthy person, and a good father and husband. Tr. at 39-40, 41, 91, 94.

H. AA Sponsors

The individual's two AA sponsors testified that the individual is a serious participant in AA and is committed to working through the program. Tr. at 51, 61. They confirmed that the individual regularly attends AA meetings several times a week. Tr. at 52, 61. They have seen positive changes in the individual since he started participating in AA, and believe that he is profiting from the program. Tr. at 51, 62. They believe that the individual is committed to the AA program and to abstaining from alcohol use. Tr. at 51-52, 67.

III. Applicable Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) ("the clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. Personnel Security Hearing (VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

IV. Analysis

As noted above, the individual in this case does not dispute the DOE consultant psychologist's diagnosis that he used alcohol habitually to excess and suffered from alcohol-related disorder not otherwise specified. The issue in this case is therefore whether the individual has demonstrated that he is reformed and/or rehabilitated from this condition. As discussed below, I find that the individual is not reformed/rehabilitated at this time.

As an initial matter, I am convinced that, as he testified, the individual has been abstinent from alcohol since early July 2004. All of the individual character witnesses corroborated the individual's testimony that he has been abstinent since July 2004. These witnesses were all highly credible. They were all very familiar with the individual and his personal life and met with him on a regular basis. They all knew about his use of alcohol prior to July 2004, and were well aware of his commitment to abstinence. They all believed that the individual intends to remain abstinent.

I was also very impressed by the individual's commitment to his abstinent life-style for the future. He testified persuasively about why he intends to remain abstinent. He stated that he feels better emotionally and physically, and that his relationship with his family is better when he is living an abstinent lifestyle. Tr. at 135, 137, 143.

In this regard, the individual was very lucid about the stressors in his life that in the past caused him to turn to alcohol for

relief. He spoke in a thoughtful manner about the steps he has take to cope with those stressors. Tr. at 129, 134. He indicated that he has a strong support system that includes his wife, his father-in-law, his AA sponsors and friends with whom he can discuss his stresses, thereby alleviating the need for alcohol to relieve stress. 124, 126, 127. His witnesses corroborated that he does indeed turn to them for help when necessary and that he is more open and honest with them in discussing his need for support. *E.g.* Tr. at 114.

I am also persuaded about the individual's genuine commitment to his rehabilitation program, including his participation in AA and his work with this therapist. The individual's AA sponsors corroborated that the individual is serious about his work in the AA program and in completing the AA steps. The sponsors spoke in detail and with conviction about the individual's active and serious AA participation. They confirmed that he is not "just going through the motions." Tr. at 68.

The individual's therapist spoke in highly favorable terms about the serious manner in which the individual has approached his therapy. Tr. at 75-77, 85. The DOE consultant psychologist and the site psychologist were also very impressed with the individual's progress. They were convinced, based on his testimony and that of the therapist, that he is seriously committed to his abstinent life style and gave him a very good prognosis. Tr. at 148-49. Thus, all the signs at this point are very much in his favor.

However, all three experts agree that it is still somewhat early to conclude that the individual is reformed/rehabilitated from his alcohol problem. The therapist believed that he was in the "early stages" of recovery. Tr. at 81. The two psychologists believed that one year of abstinence along with some additional therapy is necessary before the individual can be considered rehabilitated. Tr. at 31, 32. The reason for this is that during the first year of abstinence, the probability of relapse is high. The one-year abstinence period allows an affected individual to go through a sufficient number of ups and downs that normally occur within a year to test whether he can withstand normal stresses without turning to alcohol. Tr. at 27. Having finished only about six months of abstinence as of the time of the hearing, the individual in this case has not finished this aspect of his rehabilitation. However, the two psychologists testified that if the individual continues with his therapy and his abstinence for another six months from the date of the hearing, they would agree that he would be rehabilitated. Tr. at 150.

V. CONCLUSION

As is evident from the above discussion, I was very impressed by the testimony of the individual and his witnesses. The individual has clearly come a long way. He is thoughtful and analytical about his alcohol problem. He is sincere in his commitment to an abstinent lifestyle. The individual's witnesses were very believable, especially because of their in-depth knowledge of the individual. The record in this case indicates that this individual simply needs more of his abstinent lifestyle and therapy program in order to be considered rehabilitated.⁴

As the foregoing indicates, the individual has not at this time resolved the Criterion J and L security concerns cited in the Notification Letter. It is therefore my decision that granting this individual access authorization is not appropriate at this time.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton
Hearing Officer
Office of Hearings and Appeals

Date: March 11, 2005

^{4/} In this regard, the individual submitted a post-hearing update of his rehabilitation efforts. This submission, in the form of an affidavit dated February 15, 2005, indicates that since the hearing, he (i) has continued his abstinence; (ii) has had three counseling sessions with his therapist and one with the site psychologist; (iii) attended 16 AA meetings and continued to work with his sponsors and (iv) plans to continue these activities and his abstinence. These assertions re-enforce my overall impression that this individual is very serious about his commitment to his alcohol-free life style.